IN THE

Supreme Court of the United States

OCTOBER TERM, 1915

NO. 592.

JOHN HINGHAM, *Appellant*,

vs.

JOHN J. BRADLEY, *United States Marshal for the Northern District of Illinois.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF ON BEHALF OF APPELLEE

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NATIONAL PUBLISHING COMPANY, PRINTERS

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STATEMENT.

The order of the District Court of the United States for the Northern District of Illinois, from which this appeal was taken, denied an application for writ of habeas corpus. The appellant is detained pending his extradition to Canada, a warrant for which has been duly issued by the Secretary of State.

It appears that in September, 1911, $271,721 was stolen from the Branch of the Bank of Montreal, located at Westminster, British Columbia, and that in February, 1915, John Bingham, alias John Biglow, alias J. C. Billings, purchased in Montreal, Canada, a diamond ring with some of the stolen bills, and, with a confederate, disposed or attempted to dispose of a quantity of the stolen money in Montreal and in Chicago.

In the complaint filed with the United States Commissioner at Chicago, dated April 3, 1915, the British Consul General stated on information and belief that John Bingham had been guilty of the crime of "receiving and retaining in his possession money to the amount of fifteen hundred dollars ($1,500.00) to-wit, bills of the Bank of Montreal and the property of the said Bank of Montreal, * * * then and there knowing the same to have been stolen." (Rec. p. 7.)

On the same day a warrant was issued for the apprehension of Bingham, and he was accordingly arrested and taken into the custody of the United States Marshal. (Rec. p. 27.)

Thereafter a hearing was had before the United States Commissioner, who, in his mittimus dated May 19, 1915, stated that John Bingham, having on or about the 10th day of February, 1915, within the jurisdiction of the Kingdom of Great Britain, to-wit, Canada, "committed the crime of receiving and retaining in his possession, money * * * knowing that the said bills had been stolen;" and the said crime being embraced in an extradition convention between the Governments of the United States and Great Britain; and it appearing to the Commissioner that there were sufficient grounds to believe said Bingham guilty of the crime as charged, the Marshal was directed to commit Bingham to abide the order of the Secretary of State. (Rec. pp. 6, 7.)

The Commissioner on June 8, 1915, certified the proceedings to the Secretary of State. (Rec. p. 27.)

The appellant filed his petition for writ of habeas corpus on June 22, 1915 (Rec. p. 1), and the same was thereafter denied and the petition therefor dismissed. (Rec. p. 29.)

THE EVIDENCE PRESENTED BEFORE THE COMMISSIONER.

Depositions and other documentary evidence, as well as oral testimony, were produced at the hearing before the United States Commissioner.

In the deposition of William H. G. Phipps, an official of the Bank of Montreal, it was stated that in September, 1911, the sum of $271,721 was stolen from the New Westminster Branch of the Bank of Montreal; that among the bills so stolen were a number of five-dollar bills of the said Bank of Montreal; and that among these were bills bearing the numbers specifically designated. (Rec. pp. 14, 15.)

The deposition of Louis E. Bessette set forth the employment of deponent by a jeweler in Montreal, and recited that on February 10, 1915, Bingham purchased from him a diamond ring, paying therefor $250, of which sum $245 was in five-dollar bills of the Bank of Montreal bearing the same numbers as some of those referred to in the deposition of William H. G. Phipps. (Rec. p. 11.)

In the deposition of Isidore Ortenberg, of Montreal, it was stated that one George Wakefield on February 9, 1915, purchased travellers' cheques with some of the stolen bills (Rec. p. 12), and Luigi Rocca, also of Montreal, deposed that said Wakefield, on February 10, 1915, exchanged some of the stolen money for American currency. (Rec. p. 13.)

The testimony of Detectives Lord and Curran tended to show that Bingham and Wakefield operated together in Montreal and also in Chicago (Rec. pp. 20, 21, 22); and the testimony of other witnesses recited the circumstances under which Bingham and Wakefield disposed of Canadian bills in Chicago. Joseph Fekete,

of Chicago, testified that he changed American for Canadian money at Bingham's request, and deposited the Canadian bills in a Chicago bank (Rec. p. 23), and the cashier of the bank testified that among the Canadian bills deposited by Mr. Fekete there were found several bills bearing numbers which were mentioned on the card sent to the Bank by the Pinkerton Detective Agency with reference to the stolen money. (Rec. p. 26.)

Other documentary evidence was presented to the Commissioner, including properly certified copies of the following: The information and complaint before the Police Magistrate in Montreal in which it was charged that appellant "did receive and retain in his possession money to the amount of fifteen hundred dollars * * * then and there knowing that the said bills had been stolen" (Rec. p. 18); the warrant thereupon issued by the Police Magistrate for the apprehension of the accused (Rec. p. 18); and also the affidavit of J. T. Hackett, an advocate in Montreal, stating that in his opinion Bingham had committed an indictable offense by "receiving and retaining in his possession" the stolen bills and setting forth the applicable provisions of the Canadian Statutes. (Rec. p. 19.)

STATUTORY AND TREATY PROVISIONS.

The Criminal Code of Canada, R. S. C. 1906, ch. 146, provides as follows:

> Sec. 399. "RECEIVING PROPERTY OBTAINED BY AN INDICTABLE OFFENCE. Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who receives or retains in his possession anything obtained by any offence punishable on indictment,

or by any acts wheresoever committed, which, if committed in Canada, would have constituted an offence punishable upon indictment, knowing such things to have been so obtained. 55-56 V., c. 29, s. 314."

Sec. 400. "RECEIVING STOLEN PROPERTY. Every one is guilty of an indictable offence and liable to five years' imprisonment who receives or retains in his possession any post letter or post letter bag, or any chattel, money or valuable security, parcel or other thing, the stealing whereof is hereby declared to be an indictable offence, knowing the same to have been stolen. 55-56 V., c. 29, s. 315."

Section 239 of the Criminal Code of Illinois is as follows:

"Every person, who, for his own gain, or to prevent the owner from again possessing his property, shall buy, receive or aid in concealing stolen goods, or anything the stealing of which is declared to be larceny, or property obtained by robbery or burglary, knowing the same to have been so obtained, shall be imprisoned," etc.

By the Treaty of 1889, between the United States and Great Britain, provision is made for the extradition of persons charged with "receiving any money, valuable security, or other property, knowing the same to have been embezzled, stolen, or fraudulently obtained."

ARGUMENT.

There is in the record merely a general assignment of errors, in which the District Court is charged with error in denying the application for writ of habeas corpus, in dismissing the petition, and in not directing the writ to issue. (Rec. p. 31.)

The grounds stated in the petition as the basis for the claim that appellant's detention is illegal are, in substance, that the complaint of the British Consul General did not charge that the offence was committed in Canada; that the offence charged is not extraditable; that the proof is insufficient; and that improper and incompetent evidence was admitted.

In the case of McNamara vs. Henkel, 226 U. S., 520, it appeared that writs of habeas corpus and certiorari were dismissed by the District Court, whereupon an appeal was taken. Mr. Justice Hughes, delivering the opinion of this court, said:

> "The question simply is whether there was any competent evidence before the Commissioner entitling him to act under the statute. The weight of evidence was for his determination. The statute provides that if on the hearing, 'he deems the evidence sufficient to sustain the charge,' he shall certify the same to the Secretary of State and issue his warrant for the commitment of the accused pending surrender according to the stipulations of the treaty. Rev. Stat., §5270. Under this provision, the rule is well established that if the committing magistrate has jurisdiction of the subject-matter and of the accused, and the offence charged is within the treaty, and the magistrate has before him legal evidence on

> which to exercise his judgment as to the sufficiency of the facts to establish the criminality of the accused for the purposes of extradition, his decision can not be reviewed on habeas corpus."

To state the case at bar in the manner most favorable to the appellant: The information filed before the Police Magistrate in Montreal and the complaint of the British Consul General charged Bingham with the offence of receiving *and* retaining money, knowing it to have been stolen, and the United States Commissioner found the accused guilty of the offence charged. The Canadian Statutes provide for the punishment of one who receives *or* retains money, knowing it to have been stolen. The extraditable offence described in the Treaty between the United States and Great Britain, and the crime punishable under the Illinois Statute, is the offence of *receiving* money, knowing it to have been stolen. The evidence produced before the United States Commissioner proved that some of the stolen money was in the possession of Bingham in Montreal and in Chicago, the circumstances clearly indicating that during the period of his possession he knew that it had been stolen.

Counsel for appellee are not at this time advised of the points to be specifically urged in this Court in behalf of appellant, and it is difficult to conceive any reasonable grounds upon which appellant can further resist extradition. But this argument may be directed to the contentions heretofore advanced in Bingham's behalf, namely, to the effect, first, that the ex parte affidavits introduced in evidence were not admissible; second, that evidence of Bingham's operations in Chicago was inadmissible; third, that the evidence fails to show a guilty knowledge; and fourth, that the evidence fails to show that the money was received by Bingham in Montreal.

FIRST, WITH RESPECT TO THE ADMISSIBILITY OF THE EX PARTE DEPOSITIONS.

The objection to the introduction of the ex parte affidavits appearing in the record is not well taken. This method of proving the probable guilt of the accused is well established, and in many cases is the only practicable method.

In the case of Rice vs. Ames, 180 U. S., 371, 375, the Court said:

> "Rev. Stat., sec. 5271, makes special provision that 'in every case of complaint and of a hearing upon the return of the warrant of arrest, any depositions, warrants, or other papers offered in evidence shall be admitted and received for the purpose of such hearing if they shall be properly and legally authenticated so as to entitle them to be received as evidence of the criminality of the person so apprehended, by the tribunals of the foreign country from which the accused party shall have escaped, and copies of any such depositions, warrants or other papers, shall, if authenticated according to the law of such foreign country, be in like manner received as evidence,' of which authentication the certificate of the diplomatic or consular officer of the United States shall be sufficient. This obviates the necessity which might otherwise exist of confronting the accused with the witnesses against him."

This language is quoted in Yordi vs. Nolte, 215 U. S., 227, 231.

In Ex parte Schorer, 197 Fed., 67, it was stated:

> "When the documentary evidence has been authenticated as required by the statute, it is admissible, leaving to the commissioner merely the question of determining the sufficiency of the evidence therein contained."

The following statement was made in Powell vs. United States, 206 Fed., 400:

> "It is advisable that certified copies of the foreign complaint and warrant be attached to and made a permanent part of the complaint; but it is sufficient if, as was done in this case, those documents, alleging positively the respondent's guilt, are presented to the commissioner with the complaint, and if depositions showing probable cause are produced at the hearing."

SECOND, WITH RESPECT TO THE ADMISSIBILITY OF THE TESTIMONY THAT BINGHAM AND WAKEFIELD OPERATED IN CHICAGO

The evidence is convincing that Bingham and Wakefield were operating together in Montreal and Chicago in such manner as to indicate that they were attempting to dispose of part of the stolen money, and that they knew it was stolen. Wakefield and Bingham having been engaged in a common enterprise, evidence against one is evidence against the other. The fact that under suspicious circumstances they attempted to dispose of this money in Chicago at the time in question is not, of course, evidence of their having possessed or disposed of the money in Montreal; but possession and disposition in Canada being otherwise shown, possession and disposition in Chicago is evidence that they had know-

ledge that the money disposed of in Montreal was stolen.

In Commonwealth vs. Phelps, 192 Mass., 591, the indictment was for receiving and aiding in the concealment of stolen goods. The court said:

> "Although possession out of the Commonwealth of goods stolen in the Commonwealth would not of itself warrant a conviction for receiving them and aiding in their concealment here, evidence of such possession would be competent against one accused of that offence."

It can not but be concluded, therefore, that the testimony in question was admissible against Bingham.

THIRD, WITH RESPECT TO BINGHAM'S KNOWLEDGE THAT THE MONEY WAS STOLEN.

It is respectfully submitted that the evidence is sufficient to warrant the finding of the Commissioner that Bingham knew the money was stolen. In all prosecutions for receiving stolen goods, the proof of guilty knowledge must, in the very nature of things, be in the form of presumptions drawn from all the attendant circumstances, and the following extracts from the cases sufficiently illustrate the rule:

Huggins vs. The People, 135 Ill., 243:

> "It rarely happens that direct and positive proof of the guilty knowledge is attainable, unless the thief be produced for that purpose. It is therefore, ordinarily, to be shown by proof of attending facts and circumstances, from which by the common understanding and experience

of men, the inference of the fact arises. Thus, numerous circumstances may be shown, as, that the purchase was for much less than the real value; that the defendant denied that the property was in his possession, or concealed it; his failure to make reasonable explanation; the evil reputation of the person from whom purchased or received, and the like. (Bishop on Crim. Proc., 991; Wharton on Crim. Law, 983, and cases cited.) The knowledge of the theft need not be that actual or positive knowledge which one acquires by personal observation of the fact. 'It is sufficient if the circumstances were such, accompanying the transaction, as to make the prisoner believe the goods had been stolen.' (Bishop on Crim. Law, 1138; Wharton on Crim. Law, 984.) If he purchase or receive the goods with a belief that they are stolen, he will be held to have had that knowledge required by the statute."

McNamara vs. Henkel, 226 U. S., 520, 524:

"It is objected that while possession of property recently stolen may be evidence of participation in the larceny, the apparent possession of the automobile by the appellant affords no support for a conclusion that he committed the burglary, the crime with which he was charged. The permissible inference is not thus to be limited. The evidence pointed to the appellant as one having control of the car and engaged in the endeavor to secure the fruits of the burglarious entry. Possession in these circumstances tended to show guilty participation in the burglary. This is but to accord to the evidence, if unexplained, its natural probative force."

Ex parte Glucksman, 189 Fed., 1016:

> "As before observed, this is not a trial upon indictment, but a preliminary proceeding, the object of which is to bring the offender before a court having jurisdiction to try and punish him. Proof that the prisoner uttered a single forged note or bill of exchange is sufficient to justify his extradition."

In Fulton vs. State, 8 Ala. App., 257, 62 So., 959, defendant was convicted on an indictment charging him with buying, receiving, concealing or aiding in concealing one diamond shirt stud. On the question of guilty knowledge, the court said:

> "Possession of goods, proved to have been recently stolen, imposes on the possessor the onus of explaining how he came into possession of them; and, if he fail to make a reasonable explanation, it raises a presumption of guilt which will justify the jury in the conviction of such person."

In the case of James vs. State, 8 Ala. App., 255, 62 So., 897, a conviction under a similar indictment was held good on evidence that the warehouse receipt for the stolen cotton was found in possession of the accused.

FOURTH, WITH RESPECT TO THE CONTENTION THAT THE EVIDENCE FAILS TO SHOW THAT THE MONEY WAS RECEIVED BY BINGHAM IN MONTREAL.

This appears to be the principal contention advanced on behalf of the accused. It is a point which is exceed-

ingly technical in its nature, and reliance is placed upon it by reason of the fact that the crime is described in the Canadian Code differently from the manner of its description in the Treaty of 1889 and in the Illinois Code. It is suggested that the Canadian Statute contemplates two distinct offences, stating them to be "receiving or retaining" stolen money; that the treaty provision and that of the Illinois Code have regard to the single offence of "receiving" stolen property; that proof of Bingham's possession of the stolen money in Canada might show the distinct offence of "retaining" described by the Canadian Statute, but that this offence is not that described in the treaty; that the fact might well be that one could receive money and thereafter, while retaining the same, learn of its having been stolen; and that the failure to show actual receipt in Canada of the money, then knowing that it had been stolen, rendered it impossible to return him to Canada to be tried for the offence of retaining the money in question knowing it to have been stolen.

When this case was under consideration by the United States Commissioner he had in mind the point urged in behalf of the accused, and he said:

> "There is a difference between the wording of the statute of the demanding government and the wording of the statute of Illinois, but the meaning of both statutes is the same, namely, that he who receives and keeps stolen property, knowing the same to be stolen, is guilty of an indictable offence."

It is admitted that there is no positive proof that the money was received in Montreal. It must be borne in mind, however, that an extradition proceeding is not a

trial, and all that is necessary to show to warrant extradition is probable cause that the person accused committed the offence.

This court said in the case of Glucksman vs. Henkel, 221 U. S., 508, 512:

> "It is common in extradition cases to attempt to bring to bear all the factitious niceties of a criminal trial at common law. But it is a waste of time. For, while, of course, a man is not to be sent from the country merely upon demand or surmise, yet, if there is presented even in somewhat untechnical form according to our ideas, ground to suppose him guilty as to make it proper that he should be tried, good faith to the demanding government requires his surrender."

It is further respectfully submitted that in an extradition proceeding it would be unreasonable to demand further or higher proof of any of the elements entering into the offence. When consideration is given to the cases wherein there was an alleged insufficiency of proof as to the venue of the crime, and wherein, under circumstances analogous to those in the case at bar, juries were allowed to find the venue to be as charged, it is seen that meeting the appellant on his own ground, and assuming for the moment that in the case under discussion, the *receiving* must be shown to have taken place in Montreal, his contention falls. It is manifestly impossible to prove by direct evidence the act of receiving stolen goods. Like guilty knowledge, the courts hold that a jury may find the venue from the presumptions to be drawn from all the evidence. The following extracts from the cases illustrate the views entertained by various courts in cases of trials by jury—not preliminary hearings—on this point.

In Heard vs. State, 121 Ga., 138, the accused was convicted of altering a public school license. The court said:

> "The only question raised by the motion for a new trial which requires treatment here is as to whether the venue of the offence charged was sufficiently proved to warrant the conviction. It was uncontradicted that a teacher's license was altered, and that the altered instrument was uttered by the accused. The accused introduced no evidence, but relied on his statement, which was to the effect that the license in question was altered by some one else, and was used by him unconsciously through a mistake caused by the license becoming mixed with his papers. The license was uttered in Bryan County, but there was no evidence whatever as to where the actual alteration took place. The offence under consideration is statutory, and not subject to the general rules relating to forgery and uttering a forged instrument. Uttering a forged or altered teacher's license is not comprehended by the statute, the evil sought to be corrected being the actual forging or altering, or the procuring or aiding in the actual forging or altering. In the nature of things it is always difficult, and generally impossible, to prove the venue of the actual physical forgery or alteration of an instrument. The forger is usually a bird of passage and does not remain long in one place. He does not ply his trade in the open, and eyewitnesses to his unlawful acts are extremely rare. For these reasons it is essential, in order that justice may be done, and the guilty punished, that proof of the

venue be made by proof of circumstances, from which evidence it may be inferred. And it would seem only reasonable that evidence that a forged instrument was uttered in a given county would, in the absence of evidence to the contrary, warrant the inference by the jury that the forgery itself was committed in that county. Thus in United States vs. Britton, 2 Mason, 464, 24 Fed. Cas. No. 14,650, it was held: 'A check drawn in Philadelphia on Boston in favor of the prisoner, who was then in Philadelphia, and who produces the check altered in Boston, if there be no evidence that it was altered elsewhere, it is *prima facie* evidence that it was altered in Massachusetts, that being the first State where it was known to be altered.' See also Spencer vs. Commonwealth, 2 Leigh (Va.), 751; Henderson vs. State, 14 Tex., 503. In the present case there was evidence showing that at different times the accused had been in other counties than the one in which he was tried and in which the altered instrument was shown to have been uttered, but there was an entire lack of evidence as to where the actual alteration took place. Applying the principles already announced, we conclude that there was sufficient evidence to warrant the finding that the venue of the crime was in Bryan County. See in this connection Johnson vs. State, 62 Ga., 299; Long vs. State, 118 Ga., 319; 2 Bish Crim. Proc. (3d Ed.), Sec. 480."

Commonwealth vs. Phelps, 192 Mass., 591:

"This is an indictment in three counts for receiving and aiding in the concealment of stolen

goods. There was a verdict against the defendant on all of the counts. * * *

"Although possession out of the Commonwealth of goods stolen in the Commonwealth would not of itself warrant a conviction for receiving them and aiding in their concealment here, evidence of such possession would be competent against one accused of that offence. But assuming that the requests were intended to raise and did raise the question whether a guilty knowledge or belief first acquired outside of the State would warrant a conviction, we think that, if there was any evidence warranting such a contention, the matter was sufficiently covered by the charge. * * * We think it plain that the jury must have understood that in order to convict they must find that the defendant had acquired a guilty knowledge or belief when the goods first came into his possession, which was in this State or while they were in his possession subsequently in this State."

Wills & Conley vs. People, 3 Parker Cr. R., 473, 496:

"The plaintiffs in error were indicted and found guilty of feloniously receiving and having, in the city of New York, certain goods knowing that they were stolen. Crane, the owner of the goods, proved that they were stolen, * * *.

"A motion to dismiss the case, on the ground that it did not appear that either of the prisoners bought or received any of the property within the city of New York, was also properly overruled. The samples were received by Wills here from

Conley, after Conley had been absent but fifteen minutes to get them; that was evidence that he did not get them from Williamsburgh, but within the county of New York; and although the bulk of the articles was then in Williamsburgh, it was very probable that all were received here, and the bulk removed there for concealment, until the contrary should be proved. In this city was the prisoners' store, where they transacted their business in form, in loaning money on goods pledged. The house in Williamsburgh was only a place, apparently, for storing and concealing the goods."

Brown vs. State, 59 S. W., 1118:

"Appellant was convicted for the theft of a horse. * * *

"In motion for new trial appellant insists that the venue was not proven, in that the property was never shown to have been transported in Karnes County. An inspection of the statement of facts shows that Pullin testified that he arrested appellant near Kennedy, in Karnes County, Texas, some time in May, 1899; that witness was acting as deputy sheriff at said time, and at that time defendant had the saddle and horse in his possession. The sheriff testified that he received appellant from the custody of the deputy sheriff in Karnes County. Prosecuting witness testified that the animal found in the possession of appellant * * * was stolen from him in Lavaca County. We think venue was proven."

In the case of Baker vs. State, 58 Ark., 513, 25 S. W., 603, the appeal was from a conviction of receiving stolen property. The court, in passing on the question of whether the venue was proved as laid, said:

> "The appellant insists that the venue was not proved as laid in the indictment. This is the most difficult and troublesome question in the case. There does not seem to be any evidence that the appellant had the watch in his possession in Philips County, where he was indicted and tried, prior to the time he carried it back from Pine Bluff to Ready, the owner, in Helena, in said county. * * *
>
> "The section of the statute under which the defendant in this case was convicted reads as follows: 'Whoever shall receive or buy any stolen goods, moneys or chattels knowing them to be stolen, with intent to deprive the true owner thereof, shall, upon conviction, be punished * * *.'
>
> "Under the authorities quoted, if the jury believed from the evidence in this case—and they might have believed—that the appellant received the stolen watch in Clarendon on 24th February, and concealed the fact from Ready, the owner, knowing the property to be Ready's, with the intention of defrauding Ready into the payment of money to him by way of reward for the restoration of the watch, the offence of receiving stolen property was made out under the statute. And if the appellant returned to Phillips County with the stolen watch with a purpose to exact of Ready a reward for its return, and had the watch in Phillips County, with the intention of requiring

> Ready, as a condition to its return, to pay him money therefor, he was guilty, under the statute, the venue being thus proven. We are of the opinion that there was evidence from which these facts might have been found by the jury."

In the case of People vs. Cooper, 69 N. Y. S., 257, the accused was convicted of receiving stolen goods with knowledge that they were stolen. The court said:

> "It is insisted by the appellant that there was not sufficient evidence to warrant his conviction, because there was nothing to show either that he received the goods, or that he knew them to be stolen. It was conceded that a burglary had been committed. The overcoat which was pawned was shown to be one of the overcoats stolen at the time of the commission of the burglary. It was discovered in a pawnshop. There was testimony to the effect that the morning after the burglary the defendant had the overcoat in his possession at a time when there was trouble between several persons in regard to the disposition of the things which had been stolen, and at the time when the witness who testified to the fact of the trouble learned that the burglary had been committed. She said she did not hear of any burglary being committed until the following morning, when these men were arguing about the goods. The defendant conceded that immediately after the trouble he and another man went to the pawnshop, and that the goods were pawned; and the evidence tended to show that he pawned them. That was sufficient to warrant the jury in finding that he actually received the goods, knowing them

to be stolen, and therefore the evidence was sufficient to make out the case.

"It is further complained that the case is defective because it does not appear that the crime was committed in New York county. The defendant sought to raise this point by a motion in arrest of judgment and by a motion for a new trial upon the ground that the evidence did not show that the crime was committed in the county of New York, as it was laid in the indictment. No such point was made until after the verdict of conviction had been rendered, and therefore it was not well taken within the case of Wagner vs. People, 41 N. Y., 684.

"Upon the whole case, we think that the defendant was properly convicted."

Under the evidence in the record, it is a fair presumption that the stolen money was received in Montreal, and this presumption is as strong as the presumptions of venue discussed in the cases above set forth. Particular attention is called to the case of United States vs. Britton, 2 Mason, 464, 24 Fed. Cas. No. 14,650, where it was held, in the language of the court:

> "A check drawn in Philadelphia or Boston in favor of the prisoner, who was then in Philadelphia, and who produces the check altered in Boston, if there is no evidence that it was altered elsewhere, it is *prima facie* evidence that it was altered in Massachusetts, that being the first State where it was known to be altered."

CONCLUSION.

It is respectfully submitted that the United States Commissioner was justified in finding appellant guilty of an extraditable offence, and that the good faith of the United States under its treaty with Great Britain demands Bingham's surrender for trial in Canada. The order of the District Court should be affirmed.

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